

MAY 23 2013

**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-4616

ALEATRICE DIANNE AGEE

1108 W. 127th Street
Los Angeles, CA 90044

ACCUSATION

Vocational Nurse License No. VN 130224

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing & Psychiatric Technicians.

2. On or about December 2, 1985, the Board of Vocational Nursing and Psychiatric Technicians (Board) issued Vocational Nurse License No. VN 130224 to Aleatrice Dianne Agee (Respondent). The Vocational Nurse License expired on October 31, 2011, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
7 within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1,
8 the Board may renew an expired license at any time within four years after the expiration.

9 5. Section 490 states, in pertinent part:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code...."

24 6. Section 2878 states, in pertinent part:

25 "The Board may suspend or revoke a license issued under this chapter [the Vocational
26 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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2 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
3 violating of, or conspiring to violate any provision or term of this chapter.

4 "(f) Conviction of a crime substantially related to the qualifications, functions, and duties
5 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
6 evidence of the conviction...."

7 7. Section 2878.5 states, in pertinent part:

8 "In addition to other acts constituting unprofessional conduct within the meaning of this
9 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed
10 under this chapter to do any of the following:

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12 "(b) Use any controlled substance as defined in Division 10 of the Health and Safety
13 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
14 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
15 extent that the use impairs his or her ability to conduct with safety to the public the practice
16 authorized by his or her license.

17 "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
18 drug, or the prescription, consumption, or self-administration of any of the substances described
19 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
20 conclusive evidence thereof...."

21 **REGULATORY PROVISIONS**

22 8. California Code of Regulations, title 16, section 2504.1 states: "If the board or its
23 designee asks a licensee to provide criminal history information, a licensee shall respond to that
24 request within 30 days. The licensee shall make available all documents and other records
25 requested and shall respond with accurate information."

26 9. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

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28 "(b) A licensed vocational nurse shall adhere to standards of the profession and shall

1 incorporate ethical and behavioral standards of professional practice which include but are not
2 limited to the following:

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4 “(4) Abstaining from chemical/substance abuse....”

5 “(c) A violation of this section constitutes unprofessional conduct for purposes of
6 initiating disciplinary action....”

7 10. California Code of Regulations, title 16, section 2521 states, in pertinent part:

8 “For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
9 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
10 considered substantially related to the qualifications, functions, or duties of a licensed vocational
11 nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational
12 nurse to perform the functions authorized by his license in a manner consistent with the public
13 health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving
14 the following:

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16 “(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
17 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the
18 Code....”

19 “(e) Conviction of a crime involving fiscal dishonesty....”

20 **COST RECOVERY**

21 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
22 law judge to direct a licensee found to have committed a violation or violations of the licensing
23 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
24 case.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Convictions of a Substantially Related Crime)**

27 12. Respondent is subject to disciplinary action under section 2878, subdivisions (a) and
28 (f), and 490, in conjunction with California Code of Regulations, title 16, section 2521, in that

Respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a licensed vocational nurse, as follows:

a. On or about August 02, 2012, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 12500(A) [driving without a license] in the criminal proceedings entitled *The People of the State of California v. Aleatrice Agee* (Super. Ct. Los Angeles County, 2012, No. 2IG01084). The Court ordered Respondent to pay fines.

b. The circumstances surrounding the conviction are that on or about February 17, 2012, Respondent drove without a valid driver's license. Respondent admitted to the officer that her license was suspended due to her August 24, 2011 conviction for driving with a blood alcohol level of 0.08% or higher.

c. On or about August 24, 2011, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(B) [driving with a blood alcohol level of 0.08% or higher] in the criminal proceedings entitled *The People of the State of California v. Aleatrice Dianne Agee* (Super. Ct. Los Angeles County, 2011, No. 1SY05807). The Court placed Respondent on 36 months probation and ordered Respondent to enroll in and complete First-Offender alcohol and drug treatment and perform 217 hours of community service.

d. The circumstances surrounding the conviction are that on or about May 22, 2011, Respondent was contacted by the Gardena Police Department for a traffic violation. Respondent was arrested for driving with a tested blood alcohol level of 0.129/0.127%.

SECOND CAUSE FOR DISCIPLINE

(Alcohol Related Convictions)

13. Respondent is subject to disciplinary action under sections 2878, subdivision (a), and 2878.5, subdivision (c), on the grounds of unprofessional conduct, in that on or about August 24, 2011, Respondent was convicted of crimes involving alcoholic beverages. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (c) and (d), inclusive, as though set forth fully.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Illegal Use of Drugs/ Alcohol Posing Danger to Public & Impair Practice)**

3 14. Respondent is subject to disciplinary action under section 2878.5, subdivision (b), in
4 that Respondent consumed alcohol in a manner that was dangerous to the public and impaired her
5 ability to conduct with safety to the public the practice authorized by her license. Complainant
6 refers to, and by this reference incorporates, the allegations set forth above in paragraph 12,
7 subparagraphs (c) and (d), as though set forth fully.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Failure to Abstain from Chemical/Substance Abuse)**

10 15. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
11 conjunction with California Code of Regulations, title 16, section 2518.6, subdivision (b)(4), on
12 the grounds of unprofessional conduct, in that Respondent failed to abstain from alcohol abuse.
13 Complainant refers to, and by this reference incorporates, the allegations set forth above in
14 paragraphs 12-14, inclusive, as though set forth fully.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Respond to Board's Inquiry)**

17 16. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
18 conjunction with California Code of Regulations, title 16, section 2504.1, on the grounds of
19 unprofessional conduct, in that Respondent failed to respond to the Board's letters addressed to
20 her, dated as follows: August 29, 2012, March 8, 2012, January 24, 2012, September 29, 2011,
21 July 25, 2011, and June 1, 2011 about her convictions.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/ Violating Terms of Licensing Chapter)**

24 17. Respondent is subject to disciplinary action under section 2878, subdivision (a) and /
25 or (d), in that Respondent committed acts of unprofessional conduct and / or violated the
26 Vocational Nursing Practice Act. Complainant refers to, and by this reference incorporates, the
27 allegations set forth above in paragraphs 12-16, inclusive, as though set forth fully.

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1 **DISCIPLINARY CONSIDERATIONS**

2 18. To determine the degree of discipline, Complainant alleges, as follows:

3 a. On or about November 18, 2010, the Board issued Respondent a Notice of Warning
4 letter acknowledging her sustaining a criminal conviction as follows:

5 i. On or about February 17, 2009, after pleading nolo contendere, Respondent
6 was convicted of one misdemeanor count of violating Penal Code section 487(A) [grand theft] in
7 the criminal proceedings entitled *The People of the State of California v. Aleatrice Dianne Agee*
8 (Super. Ct. Los Angeles County, 2008, No. SA067265). The Court sentenced Respondent to four
9 days jail, placed Respondent on five years probation, and ordered Respondent to pay restitution.

10 ii. The circumstances surrounding the conviction are that on or about August 22,
11 2007, Respondent deposited an altered check, changing \$56.25 to \$19,014.78, into her bank
12 account at Wescom Credit Union. Over the corresponding days, Respondent withdrew the funds
13 from that account. On or about March 7, 2008, Respondent was arrested.

14 **PRAAYER**

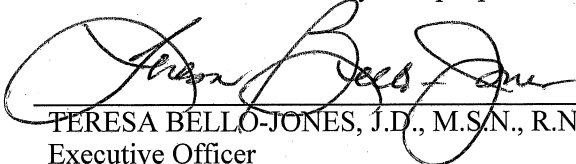
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board issue a decision:

17 1. Revoking or suspending Vocational Nurse License No. VN 130224, issued to
18 Respondent;

19 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
20 enforcement of this case, pursuant to section 125.3; and

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: May 23, 2013

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24 TERESA BELLO-JONES, J.D., M.S.N., R.N.
25 Executive Officer
26 Board of Vocational Nursing & Psychiatric Technicians
27 State of California
28 Complainant

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